

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 682.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

DENNIS QUIVER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF SOUTH DAKOTA.

FILED OCTOBER 27, 1915.

(24965)

SUPREME COURT OF THE UNITED STATES.

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vs.

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1 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR, }
vs. } Citation.
DENNIS QUIVER, DEFENDANT IN ERROR.

United States of America, ss.

The President of the United States of America to Dennis Quiver, defendant in error, and to A. G. Granger, Esq., his attorney, greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, within thirty (30) days from date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of South Dakota, Western Division, wherein the United States of America is plaintiff and you are defendant in error, to show cause, if any there be, why the decision and judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States of America, this 25th day of September, A. D. 1915, and of the independence of the United States the one hundred fortieth.

JAS. D. ELLIOTT,
District Judge for the District of South Dakota.

Attest:

OLIVER S. PENDAR,
*Clerk of the United States Court
for the District of South Dakota.*
By C. C. SCHWARZ,
Deputy.

[SEAL]

2 Service of the within citation and receipt of a copy thereof is hereby admitted at Kadoka, South Dakota, this 27th day of September, A. D. 1915.

A. G. GRANGER,
Attorney for Dennis Quiver, Defendant in Error.

3 (Indorsed:) No. —. In the Supreme Court of the United States. The United States of America, plaintiff in error, vs. Dennis Quiver, defendant in error. Citation. Filed September 29, 1915. Oliver S. Pendar, clerk. By C. C. Schwarz, deputy.

Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,	} Writ of error.
vs.	
DENNIS QUIVER, DEFENDANT IN ERROR.	

United States of America, ss.

The President of the United States of America to the Honorable James D. Elliott, judge of the District Court of the United States for the District of South Dakota, greeting:

Because in the record and proceedings, as also in the giving, making, rendition, entering, and filing of the decision and judgment sustaining the demurrer of the defendant, Dennis Quiver, to the indictment, and dismissing said indictment in that certain cause in the said District Court of the United States for the District of South Dakota, Western Division, before you, in which the United States of America is plaintiff and the said Dennis Quiver is defendant, a manifest error hath happened, to the great damage of the said plaintiff, the United States of America, as by its complaint appears;

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this

5 writ, so that you have the same at the city of Washington, in the District of Columbia, within thirty (30) days from the date hereof, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 25th day of September, in the year of our Lord one thousand nine hundred and fifteen, and of the independence of the United States the one hundred fortieth.

[SEAL.]

OLIVER S. PENDAR,

*Clerk of the District Court of the United States,
Western Division, Sioux Falls, South Dakota.*

The above writ of error is hereby allowed.

JAS. D. ELLIOTT,
*District Judge of the United States District Court
for the District of South Dakota.*

5½ UNITED STATES OF AMERICA,
Western Division, District of South Dakota, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereunto subscribe my name and affix the seal of the District Court, at office in city of Sioux Falls, this 12th day of October, A. D. 1915.

[SEAL.]

OLIVER S. PENDAR,
Clerk of said Court.

6 I hereby certify that a copy of the within writ of error was on the 25 day of September, A. D. 1915, lodged in the clerk's office of the said United States District Court for the District of South Dakota for the said defendant in error.

[SEAL.]

OLIVER S. PENDAR,
*Clerk of the United States District Court
 for the District of South Dakota, Western Division.*

(Indorsed:) No. 801 W. Div. In the Supreme Court of the United States. The United States of America, plaintiff in error, vs. Dennis Quiver, defendant in error. Writ of error. Filed September 25, 1915. Oliver S. Pendar, clerk.

7 In the District Court of the United States of America in and for the Western Division of the District of South Dakota.

THE UNITED STATES OF AMERICA, PLAINTIFF, }
vs. } No. 801 W. D.
 DENNIS QUIVER, DEFENDANT. }

Be it remembered that on the 20th day of May, A. D. 1915, the grand jurors came into court and presented to the court and filed an indictment against Dennis Quiver, charging him with the crime of assault, which said indictment is in words and figures the following, to wit:

8 The District Court of the United States of America for the Western Division of the District of South Dakota, in the Eighth Judicial Circuit.

At a stated term of the District Court of the United States of America for the Western Division of the District of South Dakota, begun and held at the city of Deadwood, within and for the district and circuit aforesaid, on the third Tuesday of May in the year of our Lord one thousand nine hundred and fifteen.

The grand jurors of the United States of America, good and lawful men, summoned from the body of the district aforesaid, then and

there being duly empaneled, sworn, and charged by the court aforesaid to diligently inquire and true presentment make for said district of South Dakota, in the name and by the authority of the United States of America, upon their oaths, do present:

That Dennis Quiver, an Indian, late of the Pine Ridge Indian Reservation, in the State of South Dakota, in said district, heretofore, to wit, on or about the sixteenth day of January in the year of our Lord one thousand nine hundred and fifteen, with force and arms, at and upon the Pine Ridge Indian Reservation, in the State of South Dakota, in the district aforesaid, and within the exclusive jurisdiction of this court, did wilfully, knowingly, and feloniously have illicit voluntary sexual intercourse with one Jennie Whistler, an Indian, and a single woman, and her, the said Jennie Whistler, did carnally know; the said Dennis Quiver being then and there a married man and then and there having a lawful wife alive who was a person other than the said Jennie Whistler, and the said Dennis Quiver and the said Jennie Whistler not being then and there lawfully married to each other, contrary to the form, force, and effect of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

ROBERT P. STEWART,
United States District Attorney,
District of South Dakota.

Names of witnesses sworn and examined before the grand jury: Rev. Ross, Jennie Whistler, Mary Crier.

(Endorsed:) No. 801. United States District Court, District of South Dakota, Western Division. The United States of America vs. Dennis Quiver. Indictment, adultery. A true bill, James S. Smith, foreman. Filed this 20 day of May, A. D. 1915. Oliver S. Pendar, clerk. Bail of defendant herein is fixed in the sum of five hundred dollars this 21st day of May, 1915. By the court. Jas. D. Elliott, judge.

And, to wit, on the same day, there was filed in the office of the clerk of said court demurrer, which said demurrer is in words and figures the following, to wit:

10 In the District Court of the United States within and for the District of South Dakota, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,	} Demurrer.
vs.	
DENNIS QUIVER, DEFENDANT.	

Now comes the defendant above named, by his attorney, A. G. Granger, and demurs to the indictment herein, and as grounds of said demurrer states and alleges as follows:

1. That this court does not have jurisdiction of the alleged offense charged in said indictment.

2. That it appears upon the face of said indictment that it does not state facts sufficient to charge the defendant with the commission of a public offense against the laws of the United States.

Wherefore the defendant prays that the said indictment be dismissed and the defendant discharged.

A. G. GRANGER,
Attorney for Defendant.

Dated this 21st day of May, A. D. 1915.

(Endorsed:) No. 801 W. Div. In the United States District Court for the District of South Dakota, Western Division. United States of America, plaintiff, vs. Dennis Quiver, defendant. Demurrer. Filed May 21, 1915. Oliver S. Pendar, clerk. By C. C. Schwarz, deputy.

And afterwards, to wit, on the 8th day of September, A. D. 1915, there was filed in the office of the clerk of said court order sustaining demurrer, which said order is in words and figures the following, to wit:

11 In the District Court of the United States within and for the District of South Dakota, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,	} No. 801 W. D. Order	
<i>vs.</i>		sustaining demurrer
DENNIS QUIVER, DEFENDANT.		to indictment.

This matter coming on to be heard before the judge of the above-entitled court, at the court room thereof, at Deadwood, South Dakota, on the 7th day of September, A. D. 1915, upon the indictment No. 801 W. D., returned against the defendant herein, and upon the demurrer of the defendant thereto, A. G. Granger, Esq., appearing for the defendant and in support of the said demurrer, and Robert P. Stewart, United States district attorney, appearing in opposition thereto, and the court having heard the arguments of counsel and considered the briefs filed herein by the respective parties, and the court having considered the said indictment and the allegations thereof, and the court having construed United States Revised Statutes, sections No. 2145 and 2146, and the Penal Code of the United States, sections No. 328, 329, and 316, being the statutes of the United States upon which said indictment is founded, and being satisfied that this court does not have jurisdiction of the person of the defendant herein or of the offense charged in said indictment, and that said indictment does not state facts sufficient to charge the defendant with the commission of any offense against the laws of the United States, and the said judgment of this court being based upon a consideration of and construction by the court of the statutes of the United States above referred to, and not upon the meaning of or the insufficiency of the language used in said indictment, it is

12 ordered and adjudged that the demurrer of the defendant, Dennis Quiver, to the indictment, No. 801, W. D., be, and the same is hereby, sustained and the said indictment is hereby ordered dismissed.

Done in open District Court this 8th day of September, A. D. 1915.
By the court:

JAS. D. ELLIOTT,
*Judge of the United States District Court
for the District of South Dakota.*

Attest:

[SEAL OF COURT.]

OLIVER S. PENDAR, *Clerk.*

To which decision and judgment of the court, so for the reasons and upon the grounds aforesaid, sustaining the demurrer to the indictment herein and ordering said indictment dismissed, and to the whole of said decision and judgment, the United States of America, by its attorney, Robert P. Stewart, United States district attorney for the District of South Dakota, hereby excepts, which said exception is by the court allowed, and the clerk of this court is ordered to enter the said exception upon the minutes of this court.

Done in open District Court this 8th day of September, A. D. 1915.
By the court:

JAS. D. ELLIOTT,
*Judge of the United States District Court
for the District of South Dakota.*

Attest:

[SEAL OF COURT.]

OLIVER S. PENDAR, *Clerk.*

(Endorsed:) No. 801 W. D. In the District Court of the United States for the West. Div. of South Dakota. United States of America, plaintiff, vs. Dennis Quiver, defendant. Order sustaining demurrer. Filed September 8, 1915. Oliver S. Pendar, clerk. By C. C. Schwarz, deputy.

13 And, to wit, on the same day, there was filed in the office of the clerk of said court certificate of judge, which said certificate is in words and figures the following, to wit:

In the District Court of the United States within and for the District of South Dakota, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,	} No. 801 W. D. Certificate of judge.
vs.	
DENNIS QUIVER, DEFENDANT.	

I, the undersigned, James D. Elliott, United States district judge for the District of South Dakota, do hereby certify that the decision and judgment in the above-entitled cause, given, made, rendered, and entered by this court on the 8th day of September, A. D. 1915, and

which said decision and judgment the United States of America is taking to the Supreme Court of the United States by writ of error, and in and by which said decision and judgment the demurrer of the defendant to the indictment was sustained and the said indictment dismissed, was based solely upon the construction by this court of United States Revised Statutes, sections 2145 and 2146, and United States Penal Code, sections 328, 329, and 316, upon which the said indictment was founded, and that by reason of said construction of the said statutes this court is of the opinion that it does not have jurisdiction of the offense charged in said indictment nor of the defendant, and that said indictment does not state facts sufficient to constitute an offense under the laws of the United States.

14 Done in open district court in Deadwood, South Dakota, this 8th day of September, A. D. 1915.

By the court:

JAS. D. ELLIOTT,
*Judge of the United States District Court
for the District of South Dakota.*

Attest:

[SEAL OF COURT.]

OLIVER S. PENDAR, *Clerk.*

(Endorsed:) No. 801 W. D. In the District Court of the United States for the West. Div. of South Dakota. United States of America, plaintiff, *vs.* Dennis Quiver, defendant. Certificate of judge. Filed September 8, 1915. Oliver S. Pendar, clerk. By C. C. Schwarz, deputy.

And afterwards, to wit, on the 25th day of September, A. D. 1915, there was filed in the office of the clerk of said court assignment of errors, which said assignment of errors is in words and figures the following, to wit:

In the District Court of the United States for the District of South Dakota, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,	} Assignment of errors.
<i>vs.</i>	
DENNIS QUIVER, DEFENDANT.	
	No. 801 W. D.
	Criminal.

Now comes the United States of America, plaintiff herein, and says that in the record and proceedings in the above-entitled cause there is manifest error, and now makes, presents, and files the following assignment of errors upon which the United States of America will rely for a reversal of the decision and judgment of the above-entitled court herein and in the prosecution of a writ of error in the above-entitled cause:

15

I.

That the District Court of the United States in and for the District of South Dakota, Western Division, erred in sustaining the de-

murrer interposed by the defendant, Dennis Quiver, to the indictment in said cause, to which decision and judgment the plaintiff duly excepted and its exception was allowed.

II.

That the said District Court erred in ordering said indictment dismissed, to which decision and judgment the plaintiff duly excepted and its exception was allowed.

III.

That the said District Court erred in holding, deciding, and adjudging that said indictment did not state a public offense against the laws of the United States, to which decision and judgment the plaintiff duly excepted and its exception was allowed.

IV.

That the said District Court erred in holding, deciding, and adjudging that the said District Court did not have jurisdiction of the offense charged in said indictment, to which decision and judgment the plaintiff duly excepted and its exception was allowed.

V.

That the said District Court erred in holding, deciding, and adjudging that the said District Court did not have jurisdiction of the person of the defendant named in said indictment, to which decision and judgment the plaintiff duly excepted and its exception was allowed.

VI.

That the said District Court erred in holding, deciding, and adjudging that the said indictment did not state facts
16 sufficient to charge the defendant with the commission of any offense under the provisions of sections 2145 and 2146, Revised Statutes of the United States, and sections 316, 328, and 329, Penal Code of the United States, to which decision and judgment the plaintiff duly excepted and its exception was allowed.

VII.

That the said District Court erred in its construction of sections 2145 and 2146, Revised Statutes of the United States, and sections 316, 328, and 329, Penal Code of the United States, wherein and whereby it held and decided that the said District Court did not have jurisdiction of the offense charged in said indictment or of the

defendant named therein and that said indictment did not state facts sufficient to charge the defendant with the commission of any offense against the laws of the United States, to which ruling the plaintiff duly excepted and its exception was allowed.

VIII.

That said District Court erred in refusing to overrule said demurrer of the said defendant and in refusing to compel said defendant to plead to the indictment.

Wherefore the United States of America, plaintiff herein, prays that said decision and judgment of the said District Court of the United States for the District of South Dakota, Western Division, and the whole thereof, be in all things reversed and that the said United States District Court be directed to reinstate said indictment and to overrule the demurrer of the said defendant and compel said defendant to plead to the indictment in said cause.

THE UNITED STATES OF AMERICA,

By R. P. STEWART,

United States Attorney for the District of South Dakota.

17 (Endorsed:) No. 801 W. D. In the District Court of the United States for the West. Div. of South Dakota. The United States of America, plaintiff, vs. Dennis Quiver, defendant. Assignment of errors. Filed September 25, 1915. Oliver S. Pendar, clerk. By C. C. Schwarz, deputy.

And, to wit, on the same day, there was filed in the office of the clerk of said court petition for writ of error, which said petition is in words and figures the following, to wit:

In the District Court of the United States for the District of South Dakota, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,	} Petition for writ of
<i>vs.</i>	
DENNIS QUIVER, DEFENDANT.	} error. No. 801 W. D.
	} Criminal.

The United States of America, plaintiff in the above-entitled action, feeling itself aggrieved by the decision and judgment of the above-entitled court rendered, given, made, and entered on the 8th day of September, A. D. 1915, sustaining the demurrer of the above-named defendant to the indictment in this action and dismissing said indictment, comes now and petitions said court for an order allowing said plaintiff, the United States of America, to procure a writ of error to the honorable the Supreme Court of the United States from said decision and judgment, and the whole thereof, under and according to the laws of the United States and especially under and by virtue of the provisions of the act of Congress of March 2, 1907,

chapter 2564 (34 Stat., 1246), in that behalf made and provided, and the said United States of America prays that said petition for
 18 said writ of error may be allowed and that said writ of error may issue and that a proper transcript of the record, proceedings, and papers upon which said decision and judgment was given, made, and entered as aforesaid, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 24th day of September, A. D. 1915.

THE UNITED STATES OF AMERICA,
 By R. P. STEWART,
United States Attorney for the District of South Dakota.

(Endorsed:) No. 801 W. D. In the District Court of the United States for the West. Div. of South Dakota. The United States of America, plaintiff, vs. Dennis Quiver, defendant. Petition for writ of error. Filed September 25, 1915. Oliver S. Pendar, clerk. By C. C. Schwarz, deputy.

And, to wit, on the same day, there was filed in the office of the clerk of said court order allowing writ of error, which said order is in words and figures the following, to wit:

In the District Court of the United States for the District of South Dakota, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,	} Order allowing writ of error. No. 801 W. D. Criminal.
<i>vs.</i>	
DENNIS QUIVER, DEFENDANT.	

Upon reading and filing the petition of the United States of America, plaintiff in the above-entitled cause, praying for the allowance of a writ of error in the above-entitled cause returnable before the Supreme Court of the United States, and upon reading and filing the
 19 assignment of errors presented with said petition, and on motion of Robert P. Stewart, United States attorney for the District of South Dakota;

It is hereby ordered that said petition be, and the same hereby is, allowed and granted; and

It is further ordered that a writ of error be, and the same hereby is, allowed to have reviewed in the Supreme Court of the United States the decision and judgment sustaining the demurrer of the defendant to the indictment and dismissing said indictment herein heretofore given, made, rendered, and entered in the above-entitled cause, and that said writ of error be issued by the clerk of this court, under the seal of this court, pursuant to the laws of the United States in that behalf made and provided; and

It is further ordered that a certified transcript of the record, proceedings, and papers herein be transmitted to the said Supreme Court of the United States; and

It is further ordered that pending the prosecution and determination of said writ of error the defendant, Dennis Quiver, shall be admitted to bail on his own recognizance.

Dated this 25th day of September, A. D. 1915.

By the court:

JAS. D. ELLIOTT,
*Judge of the United States District Court
for the District of South Dakota.*

Attest:

[SEAL OF COURT.]

OLIVER S. PENDAR, *Clerk.*
By C. C. SCHWARZ, *Deputy.*

(Endorsed:) No. 801 W. D. In the District Court of the United States for the West. Div. of South Dakota. The United States of America, plaintiff, vs. Dennis Quiver, defendant. Order allowing writ of error. Filed September 25, 1915. Oliver S. Pendar, clerk.
By C. C. Schwarz, deputy.

20 And, to wit, on the same day, there was filed in the office of the clerk of said court stipulation for record on appeal, which said stipulation is in words and figures the following, to wit:

21 In the District Court of the United States within and for the District of South Dakota, Western Division.

THE UNITED STATES OF AMERICA,	} Stipulation as to record on writ
plaintiff in error,	
<i>vs.</i>	
DENNIS QUIVER, DEFENDANT IN	} of error from the District
error.	
	} Court of U. S., District of
	} South Dakota.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the transcript of the record in the above-entitled cause on writ of error to the Supreme Court of the United States from the United States District Court for the District of South Dakota shall consist of the indictment, demurrer to the indictment, order sustaining demurrer to the indictment, certificate of the judge, petition for writ of error, order allowing writ of error, assignment of errors, writ of error, and citation, and the clerk of the United States District Court for the District of South Dakota is hereby directed to prepare such transcript of the record in said cause, as hereinbefore stipulated.

R. P. STEWART,
Attorney for Plaintiff in Error.

A. G. GRANGER,
Attorney for Defendant in Error.

(Endorsed:) No. 801 W. D. In the District Court of the United States, District of South Dakota, Western Division. The United States of America, plaintiff in error, vs. Dennis Quiver, defendant in

error. Stipulation. Filed September 25, 1915. Oliver S. Pendar, clerk.

22 UNITED STATES OF AMERICA,

Western Division, District of South Dakota ss:

I, Oliver S. Pendar, clerk of the District Court of the United States in and for the District of South Dakota, do hereby certify and return to the honorable, the Supreme Court of the United States that the foregoing, consisting of 21 pages, numbered consecutively from 1 to 21, inclusive, is a true and complete transcript of all the record, process, pleadings, orders, and all other proceedings in the case of The United States of America, plaintiff, vs. Dennis Quiver, defendant, and of the whole thereof, as enumerated in the written stipulation of the party appellant filed herein directing the clerk what parts of the record and papers to be included within such transcript, as fully as the same appears from the original records and files of said court, and I do further certify and return that I have annexed to said transcript, and included within said paging, the original citation, together with the admission of service thereof, the original writ of error with my return thereto, and in addition thereunto a copy of said stipulation.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, in the said district, this 12th day of October A. D. 1915.

[SEAL.]

OLIVER PENDAR, *Clerk.*

(Indorsement on cover:) File No. 24,965. South Dakota, D. C. U. S. Term No. 682. The United States, plaintiff in error, vs. Dennis Quiver. Filed October 27th, 1915. File No. 24,965. Quiver. Filed October 27th, 1915. File No. 24,965.

(Stamped:) Office of the clerk Supreme Court U. S. Received Oct. 27, 1915.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE UNITED STATES, PLAINTIFF IN ERROR,	} No. 682.
v.	
DENNIS QUIVER.	

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH DAKOTA.*

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and, in accordance with the Criminal Appeals Act, 34 Stat. 1246, moves the court to advance the above-entitled cause for hearing on a day convenient to the court.

Defendant, a married man, was indicted in the District Court of the United States for the District of South Dakota for having had illicit sexual intercourse with one Jennie Whistler, an unmarried Indian, in violation of section 316 of the Criminal Code defining, prohibiting, and punishing the crime of adultery within the territories and places under the exclusive jurisdiction of the United States, and

section 328 of the same Code prohibiting and punishing *inter alia* the crime of rape within an Indian reservation.

Defendant demurred to the indictment on the grounds:

1. That said District Court was without jurisdiction of the offense charged in the indictment.

2. That the indictment did not state facts sufficient to charge the defendant with the commission of an offense against the laws of the United States.

The demurrer was sustained, the court basing its judgment upon a consideration and construction of sections 2145 and 2146 of the Revised Statutes, and sections 328, 329, and 316 of the Criminal Code, and holding:

1. That it was without jurisdiction of the person of the defendant or of the offense charged in the indictment.

2. That the indictment did not state facts sufficient to charge the defendant with the commission of any offense against the United States.

Opposing counsel concur.

JOHN W. DAVIS,
Solicitor General.

NOVEMBER, 1915.

